

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

IN RE RICHARD M. OSBORNE  
*Debtor*

CASE NO. 17-17361  
CHAPTER 11  
JUDGE ARTHUR I. HARRIS

**RESPONSE OF RICHARD M. OSBORNE TO MOTION OF RECEIVER ZACHARY B. BURKONS FOR  
TURNOVER OF PROPERTY**

Richard M. Osborne, Debtor in Possession (“Debtor”) responds to the Motion of Receiver Zachary B. Burkons for Turnover of Property [Doc. 201] (“Motion” and “Receiver”). In his Motion the Receiver seeks the turnover of rent collected from various tenants that are in properties controlled by entities that are under his control in state court. With the exception of \$1,000, the Receiver is mistaken, and the Motion must be denied.

1. On December 17, 2017 (the “Petition Date”), the Debtor filed his voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").
2. The Debtor has continued in possession of his property and has continued to operate and manage his businesses as debtor-in possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and the United States Trustee has indicated that no official creditor committee is being formed in this case.
3. Prepetition record title to many of the Debtor’s properties were in the name of the Richard M. Osborne Trust (“RMO Trust”). On December 17, 2017 the Debtor revoked the Trust which caused the Trust’s property to revert in the Debtor on that date. Properties that were titled in the name of the RMO Trust are therefore property of this bankruptcy estate.
4. The Receiver moves for turnover on the basis that the “rents are not owned by the Debtor but are property of non-debtor entities under the control of the Receiver within the State Court Case.”

The following table identifies the tenant paying the rent the Receiver seeks to have turned over to him, the address of the property that tenant occupies and the record owner of that property as of the filing of this bankruptcy case, and the total amount the Receiver claims to be owed from each tenant:

Tenant	Address	Record Owner	Total Rent Sought
Beckwith Auto	2450 N Ridge Rd Painesville	RMO Trust	\$4,000.00
Best Resale & Exchange	1113 Lost Nation Rd Willoughby	Hamilton Partners	\$1,000.00
Josh Brandts	1204 W Jackson St	Wilson Land	\$800.00
Carst	1101 Lost Nation Rd	RMO Trust	\$3,040.00
Mike Resile	8310 Bellflower Mentor	RMO Trust	\$2,640.00
Clint Rose	1186 W Jackson St Painesville	RMO Trust	\$4,000.00
Brittany Tillett	7371 Reynolds Rd Mentor	Wilson Land	\$1,800.00
		<b>Total Sought</b>	<b>\$17,280.00</b>
		Total Wilson	\$2,600.00
		Total RMO	\$13,680.00
		<b>Net Due Receiver</b>	<b>\$1,000.00</b>

5. Of those entities only Hamilton Partners, Inc. is under the Receiver's Control in the State Court Case, and not the subject of a bankruptcy case in this court.
6. Upon the filing of this bankruptcy case all of the Debtor's legal and equitable rights became property of his bankruptcy estate. 11 U.S.C. §541(a)(1). All legal efforts to exercise control over property of the estate are immediately stayed upon filing. 11 U.S.C. §362(a)(1)-(3). Therefore the Receiver had no control over the properties owned by the RMO Trust once this bankruptcy case was commenced, and those rents were property of the bankruptcy estate.
7. On February 22, 2018 the First National Bank of Pennsylvania ("FNB") filed its Motion of First National Bank of Pennsylvania for Relief from Stay and Abandonment [Doc. 49] ("FNB Motion"). On April 15, 2018 the Court entered the agreed order granting the FNB Motion, which terminated the stay and abandoned from the estate the properties in the above table titled in the name of the RMO Trust. Pursuant to Federal Rule of Bankruptcy Procedure 4001(a)(3) that

order became effective on April 30, 2018. The properties that were in the name of the RMO Trust were therefore property of this bankruptcy estate from the filing date through April 30, 2018 and the rents collected from them are property of this bankruptcy estate and not the Receiver.

8. It therefore follows that of the \$17,280 sought by the Receiver, only \$1,000 is property of his State Court Case.

Therefore, the Debtor respectfully requests that this Court deny the Receiver's Motion.

Respectfully submitted,  
/s/ Frederic P. Schwieg, Esq.

---

Frederic P. Schwieg, Esq. (0030418)  
Attorney at Law  
2705 Gibson Dr  
Rocky River, OH 44116  
(440) 499-4506  
Fax: (440) 398-0490  
fschwieg@schwieglaw.com  
Attorney for Richard M. Osborne

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Response was electronically transmitted on or about the date filed via the Court's CM/ECF system to the following who are listed on the Court's Electronic Mail Notice list or was served by U.S. mail, postage prepaid, or certified mail on the persons below as indicated below.

Electronic Mail Notice List

The following is a list of the parties who are on the list to receive e-mail notice/service for this case:

Gregory P. Amend on behalf of Creditor First National Bank of Pennsylvania  
gamend@bdblaw.com, grichards@bdblaw.com

Alison L. Archer on behalf of Interested Party Lakeland Community College  
alison.archer@ohioattorneygeneral.gov, Trish.Lazich@ohioattorneygeneral.gov;angelique.dennis-noland@ohioattorneygeneral.gov

Adam S. Baker on behalf of Creditor Michael E. Osborne, Sr.  
abakerlaw@sbcglobal.net, adam@bakerlaw.us;abakerlaw@gmail.com

Austin B. Barnes, III on behalf of Creditor Tax Ease Ohio, LLC  
abarnes@sandhu-law.com, bk1notice@sandhu-law.com

Robert D. Barr on behalf of Creditor Chicago Title Insurance Company  
rbarr@koehler.law, rbarr@koehler.law

David T. Brady on behalf of Creditor Tax Ease Ohio, LLC  
DBrady@Sandhu-Law.com, bk1notice@sandhu-law.com

LeAnn E. Covey on behalf of Creditor Bank of America, N.A.  
bknotice@clunkhouse.com

Stephen R. Franks on behalf of Creditor Bank of America, N.A.  
amps@manleydeas.com

Stephen John Futterer on behalf of Creditor City of Willoughby  
sjfutterer@sbcglobal.net, r43087@notify.bestcase.com

Christopher J. Klym on behalf of Creditor Ohio Department of Taxation  
bk@hhkwlaw.com

Matthew H. Matheney on behalf of Creditor First National Bank of Pennsylvania  
mmatheney@bdblaw.com, bhajduk@bdblaw.com

Kelly Neal on behalf of Creditor The Huntington National Bank  
kelly.neal@bipc.com, donna.curcio@bipc.com

David M. Neumann on behalf of Interested Party Zachary B Burkons  
[dneumann@meyersroman.com](mailto:dneumann@meyersroman.com), jray@meyersroman.com;mnnowak@meyersroman.com

Timothy P. Palmer on behalf of Creditor The Huntington National Bank  
timothy.palmer@bipc.com, donna.curcio@bipc.com

Kirk W. Roessler on behalf of Creditor Estate of Jerome T. Osborne  
kroessler@walterhav.com, kballa@walterhav.com;slasalvia@walterhav.com

John J. Rutter on behalf of Creditor Mentor Lumber & Supply Co.  
jrutter@ralaw.com

Frederic P. Schwieg on behalf of Attorney Frederic P. Schwieg  
fschwieg@schwiegglaw.com

Frederic P. Schwieg on behalf of Debtor Richard M. Osborne  
fschwieg@schwiegglaw.com

Michael J. Sikora, III on behalf of Creditor Chicago Title Insurance Company  
msikora@sikoralaw.com, aarasmith@sikoralaw.com

Nathaniel R. Sinn on behalf of Creditor First National Bank of Pennsylvania  
nsinn@bdblaw.com, kslatinsky@bdblaw.com

Rachel L. Steinlage on behalf of Interested Party Zachary B Burkons  
rsteinlage@meyersroman.com, jray@meyersroman.com;mnnowak@meyersroman.com;rbain@meyersroman.com

Andrew M. Tomko on behalf of Creditor Tax Ease Ohio, LLC  
atomko@sandhu-law.com, bk1notice@sandhu-law.com

Jeffrey C. Toole on behalf of Interested Party Zachary B Burkons  
toole@buckleyking.com, young@buckleyking.com;heberlein@buckleyking.com

Michael S. Tucker on behalf of Creditor Citizens Bank, N.A.  
mtucker@ulmer.com

Maria D. Giannirakis ust06 on behalf of U.S. Trustee United States Trustee  
maria.d.giannirakis@usdoj.gov

Scott R. Belhorn ust35 on behalf of U.S. Trustee United States Trustee  
Scott.R.Belhorn@usdoj.gov

/s/ Frederic P. Schwieg

---

Frederic P. Schwieg